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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1998

NO. _____

CHARLES WILLIAM EWING, PETITIONER,

V.

DISCIPLINARY COUNSEL.

ON PETITON FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR A WRIT OF CERTIORARI

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Pro Se

46RR

QUESTION PRESENTED

May the highest court in a state disbar an attorney for acts conducted pursuant to bankruptcy law while acting as attorney for a Debtor in Possession of a reorganization bankruptcy filed under 11 U.S.C. chapter 11 without first obtaining leave of the bankruptcy court?

TABLE OF CONTENTS

Table of Authorities ii

Basis of Jurisdiction 1

Statement of the Case 1

Facts 2

Background 4

Argument 29

Appendix:

Order of the Supreme Court of Ohio Appealed From A-1

Office of Disciplinary Counsel v. Ewing, 83 Ohio St.3d 314 (1998).....A-2

Table of Authorities

CASES:

Barton v. Barbour, 104 U.S. 126, 27 L. Ed. 672 (1881) 1

In Re DeLorean Motor Company, 991 F.2d 1236 (1993 CA6) 1, 28

Hecht v. Levin, 66 Ohio St3d 458 (1993) 30

STATUTES:

11 U.S.C. §543 3

28 U.S.C. §1257(2) 1

BASIS OF JURISDICTION

This is an appeal from an order entered September 30, 1998 by the Supreme Court of Ohio (the "Supreme Court") permanently disbarring petitioner from the practice of law. Office of Disciplinary Counsel v. Ewing, 83 Ohio St.3d 314 (1998). Jurisdiction of the Court is conferred by 28 U.S.C. §1257(2).

STATEMENT OF THE CASE

This case involves the imposition of discipline upon an attorney licensed by the Supreme Court. The Supreme Court has acted in direct conflict with the decision noted in In Re DeLorean Motor Company, 991 F.2d 1236 (1993 CA6) and this Court's holding in Barton v. Barbour, 104 U.S. 126, 27 L.Ed. 672 (1881). The discipline was over acts of petitioner while performing his duties as counsel for a debtor in possession in a chapter 11 bankruptcy case. The federal issue was formally brought before the Supreme Court by petitioner's Motion to

Dismiss filed on March 11, 1997. The motion was overruled without hearing or explanation on April 24, 1997.

FACTS

A state court judge found petitioner in contempt of a state court order which prohibited the debtor from disbursing money from its operations until the state court could determine liens and priorities over the funds. Upon filing a chapter 11 bankruptcy, petitioner returned debtor's funds to it with appropriate instructions.

Several months after the filing, a creditor filed a motion in state court seeking contempt findings against petitioner and the debtor over the funds. No approval of the bankruptcy court was sought or obtained prior to filing the request for contempt. A five minute hearing was held upon the Motion for Contempt in the state court wherein no evidence was produced by the movant. Further, the petitioner was

limited to statements to the court that bankruptcy law prohibited the action by the state court without bankruptcy court approval and that pursuant to bankruptcy law 11 U.S.C. §543, all funds held were turned over to the debtor with appropriate instructions.

The state court issued a contempt order requiring petitioner and debtor to "repay" the state court creditor the funds in question. Petitioner then filed a motion in bankruptcy court seeking relief from the state court order. Petitioner also appealed the matter in the state court. The bankruptcy court abstained in part but enjoined any enforcement of the state court order. No further action has taken place in bankruptcy court to this date.

The state court of appeals sustained the contempt order finding in part that the automatic stay does not prevent action against the attorney for the debtor. The

court also assumed a myriad of "facts" which were not only untrue, but which were not in the record before the court. In addition to assuming facts not in evidence, the court further found that March 31, 1992 was more than ninety days before May 18, 1992! The Supreme Court denied petitioner's request to review the matter.

Ultimately, the Supreme Court, citing the state court contempt order, permanently disbarred petitioner.

BACKGROUND

Petitioner is fifty-six years old and was licensed as a lawyer in November of 1983. He has practiced extensively in bankruptcy court, primarily in the area of debtor reorganization under 11 U.S.C. chapters 11 and 12, and has been involved in numerous reported cases. The Supreme Court has now disciplined petitioner three times in response to complaints by a lawyer from a small town in southern Ohio, Leo Hall

("Hall"). Hall has also filed civil lawsuits on behalf of five of petitioner's former clients from his area alleging that petitioner was a thief, racketeer, tax cheat and incompetent lawyer who had no viable law practice. He filed approximately sixteen disciplinary related complaints against petitioner including several unsuccessful attempts to coerce money from Ohio's Client Security Fund. All but the three matters discussed herein were summarily dismissed.

All three of the complaints which resulted in discipline by the Supreme Court were originally filed with the Columbus Bar Association ("CBA"). The complaint which is the root of this matter was lodged on August 25, 1993 and not acted upon until October 14, 1997 and not finalized until September 30, 1998. These complaints are discussed briefly below.

Complaint I - The DePughs

This case, Columbus Bar Association v. Ewing, 63 Ohio St.3d 377 (1992) involved

farmers (the "DePughs") whom petitioner had represented and who as a result of petitioner's efforts had received a write off of several hundred thousand dollars and an agreed restructure of their debts. The disciplinary complaint alleged that petitioner had tried to mislead and take unfair advantage of the DePughs. DePughs sought to give their creditors back all of their assets in exchange for the creditors' forgiving an approximate five hundred thousand dollars, the amount their debt exceeded the value of their assets.

Petitioner filed a chapter 12 bankruptcy on DePughs' behalf. The bankruptcy was ultimately dismissed after the agreements to restructure DePughs' debt were put in place. DePughs misrepresented these facts at the disciplinary hearing, and FmHA records at the hearing in the civil suit revealed those misrepresentations. After this revelation, the civil suit was

then settled. The disciplinary action, relying on the "facts" later contradicted in the civil case, resulted in petitioner receiving a suspended suspension.

Complaint II - The Mowerys

This case, Columbus Bar Association v. Ewing, 75 Ohio St.3d 244, 661 N.E. 2d. 1102 (1996) involved another husband and wife farmers (the "Mowerys"), who were friends of the DePughs. The Mowerys were represented by Hall in a civil lawsuit, the disciplinary case and an additional attempt to raid the Client Security Fund. Hall again alleged that petitioner was a thief, a racketeer and a fraud and that petitioner had malpracticed and merely sought to take Mowerys' land from them without their knowledge. The disciplinary case was marked by several irregularities (discussed below) and included professional misrepresentations and a false affidavit regarding discovery resulting in an effective denial of

discovery to petitioner. Additionally, severe conflicts of interest were ignored, threats were made to petitioner's counsel and wholesale denial of the admission of evidence sought to be submitted by petitioner occurred. Finally, a crucial witness who had been subpoenaed by petitioner failed to attend the hearing. At the end of the second full day of hearings, petitioner sought to have the matter continued to the next day to allow the testimony of the witness, but this request was denied.

Petitioner also sought testimony from the investigator and several other pertinent individuals who had knowledge of the irregularities described herein, but all discovery was denied and subpoenas issued to various parties were summarily quashed by the Panel Chair.

The hearing panel found by a clear and convincing standard that petitioner had

defrauded the Mowerys despite clear evidence which contradicted the testimony of Mowery.

In June of 1998, a jury heard the Mowery civil case and after nine days, determined that not only was the disciplinary finding wrong, but that petitioner was entitled to receive the attorney fees he had earned while representing Mowerys during their troubles.

The Bar Application Matter

Filed with the Mowery complaint was a charge that petitioner had lied in his bar application in 1983. Hall was the complainant. The allegations were that petitioner had concealed a "professional" discipline and an administrative hearing and that he had held a license requiring proof of good character. Petitioner's confidential application had been improperly procured. A subpoena for the records official was denied by the panel.

The allegations by CBA regarding the bar application were threefold and revolved around a real estate sales license held by petitioner prior to applying to become a lawyer. The Ohio Real Estate Commission had charged that while writing a private contract between himself and a building contract customer, petitioner took a deposit and refused to return it. After a lengthy hearing which did not include a charge of writing a negligent contract, the commission concluded that petitioner did not fail to return a deposit, but had unintentionally been negligent in writing the contract. For that, petitioner's real estate license was suspended for thirty days.

The bar application asked if the applicant had ever been disciplined by a professional organization such as, but not limited to, a bar association. The answer was "no" since petitioner believed and still believes that a real estate sales

person is not a professional such as a lawyer, a doctor or other licensed professional. In fact, when drafting its Licensed Professional Association laws, the Ohio legislature appeared to share petitioner's opinion because it omitted real estate sales persons or brokers as professionals; indeed the procurement of a real estate sales license does not and did not require a high school diploma of applicants such as petitioner.

Next, the application asked for a list of all court appearances as either plaintiff or defendant by petitioner. All court appearances were listed. The Real Estate Commission matter, an administrative procedure, was not listed. Again, the truthful answer was concluded to be false by the panel and affirmed by the Supreme Court without explanation for why it was false.

Finally, a question asking if petitioner had ever held an occupation which

included proof of good character as a requirement of employment was answered "no." There is a one line question on the real estate sales person's application requiring the sponsoring broker to state that he knows the applicant and believes he or she to be honest. Petitioner believes that hardly qualifies as a requirement of proof of good character. Despite the facts that the answers were truthful and the so called offense was entirely unintentional, the panel concluded that petitioner had lied on his bar application. Petitioner's license to practice law was suspended indefinitely.

Complaint III - The Contempt Matter

The latest matter is again brought by Hall. In 1992 petitioner was asked to represent a client in a bankruptcy. Prior to this contact, the client had been in a serious dispute with the State of Ohio (the "State") attorney general's office over a consumer complaint matter. As a part of

that dispute, the client, while represented by other lawyers, had been in contempt of court for not honoring a court order to pay over seventy five percent of their net closing funds received to a guarantee fund. Shortly before the filing of the bankruptcy, another creditor had filed suit against the client and demanded one hundred percent of the debtor's income. The creditor did not have a perfected lien, however, that court ordered that petitioner's client not disburse any of its income until the courts determined any liens or priorities.

Petitioner advised the parties that a bankruptcy was imminent and that pursuant to bankruptcy law neither creditor would have a secured claim against the funds nor would they receive any money from the bankruptcy. During negotiations, petitioner accrued funds of the debtor in his trust account. Negotiations were unsuccessful and the bankruptcy was filed eighty nine days later.

Simultaneous with the filing of the bankruptcy, the funds were turned back to the debtor with instructions regarding its rights and duties as a Debtor in Possession in a chapter 11 bankruptcy proceeding.

Several months later, a creditor filed an action for contempt in the state court. Despite federal law protecting both a custodian and the attorney for the debtor from state court action and without permission of the bankruptcy court, state court judge James O'Grady held a contempt "hearing," found petitioner in contempt and ordered petitioner to pay one hundred percent of the funds in question to the state; this despite no court order mentioning petitioner in any way and with only the existence of an order which merely prohibited the debtor from using its income until the priorities or liens, if any, could be determined.

At the two to five minute contempt hearing, the court heard no witnesses. The court was advised of petitioner's duty under federal bankruptcy law to return debtor's funds and was further advised that the matter was subject to the Automatic Stay under the bankruptcy code. A contempt order was issued requiring petitioner to pay the funds personally. The bankruptcy court, however, did not allow the contempt order to be enforced. Despite the passage of many years, there never has been any permission sought from the bankruptcy court by either the State or the Supreme Court before or, for that matter, after taking action against petitioner. The bankruptcy court's order remains in effect. Petitioner's actions were not only proper but required under the federal bankruptcy procedures.

During the disciplinary procedures it was repeatedly pointed out that the contempt order and the actions by the Supreme Court

were in violation of federal law and that the contempt was both procedurally and factually wrong. The procedure nonetheless went forward with utter disregard for both federal law and the facts.

Over the objections of petitioner, the state court judge was not required at trial. He was not unavailable as described in the rules; he was on vacation. Despite the offer by petitioner to postpone the hearing, the panel chose to accept a deposition of the judge as evidence. Nonetheless, the judge did make some startling admissions that he: 1) did not know anything about bankruptcy law and, thus, did not consider all of the duties and rights of the debtor and its counsel brought to his attention by petitioner, 2) thought that the bankruptcy laws were a disgrace and ought to be repealed, and 3) believed that some of the people filing bankruptcy were simply thieves.

Transcript of Judge O'Grady in evidence before the hearing panel at page 33, line 19, Questions by petitioner, Answers by Judge O'Grady:

Q. Would you say that the bankruptcy rules are extremely complex?

A. I would say that I know absolutely nothing about any bankruptcy rules. I never appeared at a Bankruptcy Court. I never studied bankruptcy law. I think what I know about the bankruptcy laws is that they are a disgrace and most of them should probably be repealed; that at least we should have uniformity throughout the United States; that we certainly not let the thieves, uh, who want to run out to Florida to keep million dollar estates, to go bankrupt and do in other states what they are doing....

Judge O'Grady further stated later on in the deposition at page 50, line 7:

Q. (by Ewing) I will be more clear. Contempt is a violation of a specific Court order, is it not?

A. (By Judge O'Grady) Right.

Q. It cannot be a violation of a private agreement; right?

A. Right.

Later at Page 51, Line 15, Questions by Ewing to Judge O'Grady:

Q. Do you ever recall me saying that yes, I agree to hold this performance guarantee fund in my trust account?

A. I don't have a specific recollection whether you said that or not.

Thus, with utter disregard for federal law and the fact that no court order was violated, petitioner was held in contempt

Irregularities - The Complainant

Hall confesses that he knows nothing of bankruptcy law, has not practiced bankruptcy law and knows nothing of FmHA procedures. He falsely reported to the IRS that petitioner

had cheated on his income taxes. He was quoted in headlines of a newspaper saying that all the petitioner ever did was steal the money of his clients. He telephoned a business partner of petitioner, who was a defendant in the civil lawsuits mentioned above, charging that petitioner was cheating the business partner and that if the partner would fire petitioner from representing him, he would make it easier on him. He filed four separate claims with the Ohio Client Security Fund seeking money claiming that petitioner had stolen money from his clients (all were ultimately denied). He solicited one of the clients by calling him, advising him there was a claim and then representing him.

Petitioner has filed a civil lawsuit against Hall and his law firm which remains pending. One of the partners in this firm is a man named John Hosterman. Hosterman's brother, Charles Hosterman, is the United

States attorney who represented the FmHA and who was successful in denying petitioner access to the FmHA files. It is the same United States Attorney's office which represents the IRS. Despite FmHA's resistance to petitioner's subpoena, FmHA has willingly testified on behalf of the Mowerys and the DePughs both at the civil matters and the disciplinary matters.

Hall also solicited and conspired with another attorney to file a similar lawsuit against petitioner and a corporation in which he is involved, alleging the same litany of theft, fraud, etc. That lawsuit involved a simple dispute over the amount owed on an account in a non lawyer matter. The judge in that case refused to allow the case to go forward against petitioner's business partner. The case went to trial, petitioner was successful in the case and the amount was paid immediately upon final judgment. The major significance of this

case is that the small law firm of which E. Joel Wesp, who was chairman of the Executive Committee of CBA's Certified Grievance Committee, is a partner, was the law firm involved in that case.

Procedural

Bar Counsel, Bruce Campbell

Bruce Campbell ("Campbell"), an attorney, is the full time employee of the CBA Certified Grievance Committee. During proceedings of Complaint II, Campbell lied to the panel chair regarding discovery. There is no transcript of his lie; however, in denying petitioner's Motion for Discovery, the panel chair noted that Campbell had represented to the chair that all discovery had been provided. Later, in an affidavit propounded by Campbell, Reginald Jackson, the investigator, avowed that no discoverable evidence was copied from files of FmHA. Shortly thereafter, after repeated demands by petitioner,

several copies of evidence copied by Jackson and contained in CBA's files were delivered to petitioner. In fact, additional exculpatory evidence was observed when a representative of FmHA testified at the hearing during Complaint II. Petitioner has never been able to examine the FmHA files in question.

The attitude of Campbell toward his duty is flippant and cavalier. One may consider the following quotes contained in the Columbus Bar Monthly magazine, May, 1995 issue as an example:

> "One of the more erotic parts of being in the ethics racket is being able now and then to inflict preachments on the Great Unwashed. …
>
> "I got my jollies writing this bit, I just hope I don't go blind from doing this too often."

Reginald Jackson, The CBA Investigator

Jackson is a private attorney in Columbus, Ohio, who was an adversary of petitioner on several cases involving bankruptcy clients. Jackson compromised his professional relationship when he submitted a false affidavit to a court in a non-related matter many years prior to the investigations in this matter. During the investigation and prosecution of Complaint I, petitioner believed that Jackson was honestly doing his job and that his reliance upon the false testimony of DePughs was not based upon any conflict of interest or improper intent but was merely a mistake in judgment. However, during the investigation of Complaint II, it became clear early on that Jackson's motives were not pure. Petitioner sought to examine the files of FmHA. Despite a successful resistance of petitioner's subpoena, FmHA finally decided to allow the deposition of the FmHA

official. (Govt. prerogative.) At the deposition it was discovered that Jackson had had in his possession for over six weeks the only copy of the entire original file of FmHA as it related to Mowerys.

Despite the continued denials that any copies of the FmHA files existed, some of the copies were finally provided to petitioner. It became clear that the actual complainants had not been interviewed and Jackson's conflict of interest and dishonest actions were apparent. Jackson did not admit his conflict of interest immediately, but did eventually resign from his post due in part to his now admitted conflict of interest. Unfortunately, the damage had been done. The investigation was over and the formal complaint mechanism was moving.

E. Joel Wesp, Chairman Of The Executive Committee

As described above, petitioner complained of Wesp's serious conflict of interest. This complaint was denied when

Wesp submitted an affidavit stating that, despite his signature on the disciplinary complaint, he had not participated in any way due to his admitted conflict of interest. In another matter, Campbell submitted an affidavit which clearly stated that Wesp did in fact participate in the suspension of petitioner. Evidence was shown by petitioner that Hall had written to Wesp's associate and shared confidential information obtained from CBA intimating that despite rules which do not allow such communication, Wesp's associate might benefit from that information.

Threats To Petitioner's Counsel

At a meeting between petitioner's counsel, Rankin Gibson, himself a former member of the Supreme Court, Campbell, Jackson and other members of the committee, Gibson was threatened with personal retributions if he continued to represent petitioner or did not persuade petitioner to

resign from the bar. Gibson was advised that, in fact, they were going to see to it that petitioner would be convicted; if not on this matter, they would find another matter to effect the removal of petitioner from the bar. Petitioner sought the deposition of all committee members to gather evidence of these acts and the extent of any investigation which had occurred. All of the subpoenas were quashed both as to discovery and for the hearing in this matter.

As is provided in Supreme Court rules, Petitioner sought to have the investigation reviewed by the Disciplinary Counsel, another Certified Grievance Committee or a special master. All requests were denied. The hearing was marked by numerous snappy retorts to petitioner to "ask your next question" without opportunity to make objections or argue against objections made. A large amount of evidence was summarily

denied consideration by the panel chair. Finally, the crucial witness which petitioner had subpoenaed did not show up during petitioner's presentation. When asked at the end of the second full day of hearing to reconvene to hear this witnesses' testimony, the panel replied that two days was enough and that a third day would be an unfair imposition on the volunteer panel members. This crucial witness did testify in the civil matter over the same set of facts, and the jury found facts directly in contradiction to the hearing panel findings.

A proffer of all evidence which would have been entered was made to the Supreme Court and a request for more than the fifteen minutes to present petitioner's case was made. The enlargement of time was denied. Despite the purpose of a proffer, which is to allow the reviewing court to determine if such evidence was of the type which should have been allowed, the Supreme

Court commented that the proffers did not contain any proof and, thus, would not be considered.

Complaint III - The Contempt

This complaint was lodged with the CBA by Hall on August 25, 1993. The matter was not acted upon in any way until 1997 when petitioner was advised by the Disciplinary Counsel that a formal complaint would be filed. Petitioner reminded the Disciplinary Counsel of the extraordinary delay and that the matters complained of were matters which took place in bankruptcy court while petitioner was counsel for the Debtor in Possession and as part of the administration of the case. Petitioner further referred to the DeLorean case which clearly holds that bankruptcy court approval must be obtained before proceeding in any forum other than the bankruptcy court. Despite federal bankruptcy law and the DeLorean case law,

the Disciplinary Counsel recommended that petitioner be permanently disbarred.

ARGUMENT

These procedures, which involve blatant disregard of federal law, fairness and due process, serious conflicts of interest, threats against petitioner's counsel, public flippant behavior by the bar counsel, perjured affidavits as well as professional misrepresentations and a delay of over five years from the receipt of the complaint in bringing action, have been blindly affirmed and validated by the Supreme Court. One cannot help but conclude that the Supreme Court does not provide any meaningful review of disciplinary cases. Indeed, petitioner cannot find any cases where the findings of the Board have been overturned, only those increasing the penalties. This procedure involves the Supreme Court enacting Rules of Conduct, investigating a complaint, prosecuting the case, adjudicating the case

and then purporting to provide appellate review. Nowhere are there any checks or balances.

The Supreme Court, when overturning the Ohio legislature's grant of good faith immunity to disciplinary complainants, has referred to the disciplinary process as "pedigreed." Hecht v. Levin, 66 Ohio St3d 458 (1993). The actions of the Supreme Court impugn the solemnity and gravity of the process. "Capital punishment" has been inflicted upon the professional career and reputation of petitioner by conduct which violates federal law and fairness.

Debtors, debtors' counsel, receivers or trustees must be assured that they will not be ambushed in state court for following federal bankruptcy rules and procedures.

The Supreme Court of Ohio

1998 TERM

Disciplinary Counsel, Relator,	:	ON CERTIFIED REPORT BY THE BOARD OF
V.	:	COMMISSIONERS ON GRIEVANCES AND
Charles William Ewing, Respondent.	:	DISCIPLINE OF THE SUPREME COURT
	:	Case No. 98-715
	:	O R D E R

The Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on April 14, 1998, recommending that pursuant to Rule V, Section 6(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Charles William Ewing, be permanently disbarred from the practice of law. Respondent filed no objections to said Final Report, and this cause was considered by the Court. On consideration thereof,

IT IS ORDERED AND ADJUDGED by this Court that, pursuant to Gov. Bar R. V, Sec. 6(B)(1), respondent, Charles William Ewing, Attorney Registration Number 0025146, last known business address in Hilliard, Ohio, be permanently disbarred from the practice of law consistent with the opinion rendered herein.

IT IS FURTHER ORDERED that the respondent, Charles William Ewing, immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

IT IS FURTHER ORDERED that respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

IT IS FURTHER ORDERED that respondent is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

IT IS FURTHER ORDERED that respondent be taxed the costs of these proceedings in the amount of One Thousand Four Hundred Eighty-Nine Dollars and Twenty Cents ($1,489.20), which costs shall be payable to this Court by certified check or money order on or before 90 days from the date of this order. It is further ordered that if these costs are not paid in full on or before 90 days from the date of this order, interest at the rate of 10% per annum shall accrue as of 90 days from the date of this order, on the balance of unpaid Board costs; respondent will be found in contempt of the Supreme Court; and the matter will be referred to the office of the Attorney General for collection.

IT IS FURTHER ORDERED, sua sponte, by the Court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded against the respondent by the Clients' Security Fund pursuant to Gov. Bar R. VIII, Sec. 7(F). It is further ordered, sua sponte, by the Court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov. Bar R. VIII, Sec. 7(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

IT IS FURTHER ORDERED that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of his disbarment [sic] and his consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in his place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where

the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in the possession or control of respondent;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of his disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the Clerk and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where the affiant may receive communications; and

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

IT IS FURTHER ORDERED that until such time as he fully complies with this order, respondent shall keep the Clerk and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

IT IS FURTHER ORDERED, sua sponte, that all documents filed with this Court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

IT IS FURTHER ORDERED, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the attorney registration office.

IT IS FURTHER ORDERED that the Clerk of this Court issue certified copies of this order as provided for in Gov. Bar R. V, Sec. 8(D)(1), that publication be made as provided for in Gov. Bar R. V, Sec. (8)(D)(2), and that respond the costs of publication.

THOMAS MOYER
Chief Justice

83 Ohio St. 3d 314 printed in FULL format.

OFFICE OF DISCIPLINARY COUNSEL v. EWING.

98-715

SUPREME COURT OF OHIO

83 Ohio St. 3d 314; 699 N.E.2d 928; 1998 Ohio LEXIS 2522

May 27, 1998, Submitted

September 30, 1998, Decided

PRIOR HISTORY: [**1]

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-5.

On October 14, 1997, relator, Office of Disciplinary Counsel, filed an amended complaint charging that respondent, Charles W. Ewing of Amlin, Ohio, Attorney Registration No. 0025146, had violated several Disciplinary Rules while acting as counsel for two real estate companies. Respondent filed an answer, and the matter was submitted to a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board"), which made the following findings of fact.

On July 21, 1991, the state of Ohio filed a complaint and motion for preliminary and permanent injunctions in common pleas court against American Real Estate Cooperatives, CMH, Inc. ("ARC-0"), and a related company for their violations of the Ohio Consumer Sales Practices Act. By a consent order of August 29, 1991, later modified on October 16, 1991, the parties agreed to a preliminary injunction under which the companies would deposit into a "performance guaranty fund" seventy-five percent of all funds which came into their possession as a result of real estate closings until the case was resolved, [**2] and that further, the companies would not transfer assets of any kind without an order of the common pleas court.

In April 1992, in a separate case, the court entered a judgment of $ 11,000 against ARC-0 in favor of a former realtor of the company. Because there might be a conflict between the cases, the attorneys for the state, and respondent, who was than representing the companies, agreed that the companies would deposit their funds, including the performance guaranty fund, into respondent's trust account until the conflict could be resolved.

On May 18, 1992, just before the trial in the suit brought by the state was about to begin, ARC-0 filed a Chapter 11 case in the United States Bankruptcy Court for the Southern District of Ohio. Both the common pleas judge and the bankruptcy judge ruled that the automatic stay provisions of the Bankruptcy Code

did not prevent the state's lawsuit from proceeding. Ultimately, the suit resulted in a $ 122,000 judgment against the companies, which was affirmed by the court of appeals.

Early in July 1992, at the Section 341 hearing in the Chapter 11 case, the state discovered that respondent had totally disbursed the funds in the trust account. [**3] By letter in July, the state asked for an accounting with respect to the trust account. Respondent did not answer. Again, in August, the state asked for an accounting, threatening a contempt action against the company and against respondent if the accounting was not forthcoming. At the last moment respondent provided an accounting, which indicated that all the funds in the trust account had been disbursed. Without common pleas court or bankruptcy court authorization, between March and August 1992, respondent had distributed more than $ 40,000 from the trust account, including $ 10,000 as his retainer for the Chapter 11 proceedings and $ 600 for the bankruptcy court filing fee.

Respondent's position was that of the funds in the trust account, twenty-five percent or $ 10,000, could be paid to him as a retainer for filing the Chapter 11 case, and the balance of the funds could be used by the company. However, in the order appointing respondent as counsel to the company as debtor-in-possession in the Chapter 11 case, the bankruptcy judge specifically struck out a proposed paragraph allowing respondent to compensate himself without prior court approval. When converting the Chapter

[**4] 11 reorganization case to a Chapter 7 bankruptcy case over a year later, the bankruptcy judge noted that with respect to the money in respondent's trust account "it is highly irregular, given the outstanding state court order, to utilize these funds without some disposition from this Court. The Debtor has only recently sought some determination from this Court, after the funds have been expended.".

The state obtained an order from the common pleas court, finding the company and respondent in contempt for disbursing the funds and further finding them jointly and severally liable to the trust account in the amount of $ 40,000. After the common pleas court decision, respondent filed a motion in the bankruptcy court seeking to void any action of the common pleas court and any action to enforce the threatened contempt action. The bankruptcy judge, however, issued an "Order of Abstention" allowing the matter to proceed in the state courts. The court of appeals ultimately affirmed the judgment of the common pleas court.

The panel concluded that by disbursing money from the ARC-0 trust funds in his hands, respondent violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, [**5] deceit, or misrepresentation), (5) (engaging in conduct prejudicial to the administration of justice), (6) (engaging in conduct adversely reflecting upon the attorney's fitness to practice law), and 7-106(A) (disregarding the ruling of a tribunal). The panel noted that in mitigation,

respondent presented his position that by the filing of the Chapter 11 proceeding in the bankruptcy court, Sections 542 and 543 of the Bankruptcy Code required that he pay the funds on hand to the company. The panel said that these issues had been determined adversely to respondent by the ruling of the court of appeals in the contempt case.

The panel further noted that respondent had previously received a six-month suspension in *Columbus Bar Assn. v. Ewing (1992), 63 Ohio St. 3d 377, 588 N.E.2d 783*, and an indefinite suspension in *Columbus Bar Assn. v. Ewing (1996), 75 Ohio St. 3d 244, 661 N.E.2d 1109*, and recommended that respondent be disbarred from the practice of law in Ohio. The board adopted the findings, conclusions, and recommendation of the panel.

DISPOSITION: Respondent disbarred from the practice of law in Ohio.

HEADNOTES: Attorneys at law—Misconduct—Disbarment [sic]—Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation—Engaging in conduct prejudicial to the administration of justice—Engaging in conduct adversely reflecting on fitness to practice law—Disregarding the ruling of a tribunal.

COUNSEL: Jonathan E. Coughlan, Disciplinary Counsel, and Harold F. Craig, III, Assistant [**6] Disciplinary Counsel, for relator.

Charles W. Ewing, pro se.

JUDGES: MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, COOK and LUNDBERG STRATTON, JJ., concur.

OPINION: [*316] Per Curiam. We adopt the findings and conclusions of the board. Orders entered both by the common pleas court and the bankruptcy court specifically prohibited respondent from disbursing legal fees to himself from the trust funds. The order of August 29, 1991 as modified on October 16, 1991 provided that the company would not transfer assets without order of the common pleas court. In entering his 1992 order appointing respondent as counsel in the Chapter 11 case, the bankruptcy judge specifically deleted a paragraph which would have allowed respondent to compensate himself without prior court approval. Respondent therefore knew that the funds he held in his trust account could not be disbursed either to himself as legal fees or to the company for operating expenses without authorization from either the common pleas court which established the fund or the bankruptcy court which controlled the financial reorganization of ARC-O. Nevertheless, respondent chose to violate the orders of both courts.

We agree with the board's [**7] recommendation. Respondent is hereby disbarred from the practice of law in Ohio. Costs taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY. PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

CERTIFICATE OF SERVICE

I do hereby certify that I served the above document by regular mail, postage prepaid, on all parties as listed below this 31st day of March, 1999.

Disciplinary Counsel
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